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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Guatemala, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-72122 (E) 230102 250102

Annex

Letter dated 24 December 2001 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

In accordance with paragraph 6 of resolution 1373 (2001), I am pleased to submit herewith for consideration by the Committee you chair a succinct report on the steps taken by the Government of Guatemala to comply with the commitments contained in said resolution.

As the report indicates, this is a first approach to the topic. The authorities responsible for the various matters addressed by resolution 1373 (2001) have identified the main shortcomings and thus the main issues that would benefit from technical cooperation which are as follows:

- Immigration services and travel documents;
- Airport security;
- The link between drug trafficking and terrorism;
- Arms trafficking;
- Money-laundering.

(*Signed*) Gert **Rosenthal**
Permanent Representative

Enclosure

Report on the steps taken by the Government of the Republic of Guatemala to implement Security Council resolution 1373 (2001)

Introduction

Pursuant to paragraph 6 of Security Council resolution 1373 (2001), the Government of the Republic of Guatemala is submitting this report on its domestic legislation to the Security Council Committee responsible for monitoring the implementation of that resolution.

Almost immediately after the events of 11 September, the Government of Guatemala, in consultation with the other Central American Governments (see document S/2001/1136), took steps to help combat terrorism within the framework of the personal, civil and political liberties inherent in a democratic society. The Minister for Foreign Affairs himself became Guatemala's focal point for the purpose of communication with the Counter-Terrorism Committee. To that end, a task force was formed within the Ministry of Foreign Affairs, together with an Inter-Agency Commission encompassing all government entities with responsibilities in the areas covered by Security Council resolution 1373 (2001). On 7 November 2001, the post of Inter-Agency Security Coordinator was established, with the functions described below. The Coordinator is a member of the Inter-Agency Commission, which is chaired by the Minister for Foreign Affairs.

At the same time, steps were taken to expedite the ratification of the main body of international instruments relating to the fight against terrorism. On 23 October 2001, Guatemala signed the International Convention for the Suppression of the Financing of Terrorism, and the Congress of the Republic has already approved, by Decree No. 70-2001, the International Convention for the Suppression of Terrorist Bombings; the instrument of ratification will be deposited shortly.

The information contained in this report should be viewed as a first approach to the topic that outlines the institutional and legal framework. The report concludes with a summary of issues in the legislative, regulatory and institutional spheres that would benefit from international technical cooperation.

Paragraph 1 of Security Council resolution 1373 (2001):

1. *Decides* that all States shall:

(a) Prevent and suppress the financing of terrorist acts.

What measures, if any, have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

On 28 November 2001, the Guatemalan Congress adopted Decree No. 67-2001, the Act Against the Laundering of Money or Other Assets. That Act entered into force on 11 December 2001. It establishes the offence of laundering money or other assets and provides for measures aimed at its prevention and punishment. It confers new functions on the Superintendency of Banks, bans anonymous accounts and establishes recording and reporting requirements for the

banking system. It also establishes the Special Audit Office within the Superintendency of Banks.

Article 2 of the Act provides as follows:

"Offence of laundering money or other assets. The offence of laundering money or other assets is committed by any person who, acting alone or through another person:

(a) Invests, converts, transfers or carries out any financial transaction involving property or funds, and knows, or, by reason of his or her post, employment, occupation or profession, is obligated to know, that such property or funds are the product or proceeds of or have originated in the commission of an offence;

(b) Acquires, possesses, administers, holds or uses property or funds, and knows, or, by reason of his or her post, employment, occupation or profession, is obligated to know, that such property or funds are the product or proceeds of or have originated in the commission of an offence;

(c) Conceals or prevents the determination of the true nature, origin, location, destination, movement or ownership of property or funds or of rights relating to such property or funds, and knows, or, by reason of his or her post, employment, occupation or profession, is obligated to know, that such property or funds are the product of the commission of an offence."

Article 398 of the Penal Code provides, with respect to illegal armed groups, that persons who organize, form or direct armed groups or militias other than those of the State shall be sentenced to 3 to 10 years' imprisonment, and that the same penalty shall be imposed on those who provide assistance or economic cooperation for the maintenance of such groups.

Lastly, and in more general terms, the State of Guatemala has established the post of Inter-Agency Security Coordinator, by Government Decision No. 429-2001, which was published in the Official Gazette on 17 October 2001. The Coordinator has the following functions:

- Proposing, for the approval of the President of the Republic, policies and strategies to prevent the commission of terrorist acts at the national and international levels;
- Proposing, for the approval of the President of the Republic, the actions needed to prevent, by legal means, the financing and preparation of terrorist acts in the country;
- Exchanging operational information on this subject with international entities of a similar nature, in accordance with domestic law and the practices of international law;
- Proposing, for the consideration of the President of the Republic, actions to be taken by the Ministries of the Interior, Foreign Affairs and Defence and by the Secretariat of Strategic Analysis of the Office of the President to prevent terrorist attacks;

- Promoting the coordination of initiatives at the national, regional and international levels to strengthen the response to serious threats to international peace and security;

- Promoting the implementation of actions to strengthen government policies in the areas of immigration, drug trafficking and counter-terrorism at airports, seaports and border crossing points.

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Criminal law

General principle: In Guatemalan law, the Penal Code establishes degrees of participation in the commission of acts that constitute offences, indicating that perpetrators are persons who cooperate in the perpetration of an offence, whether in its preparation or in its execution, by means of an act without which the offence could not have been committed (art. 36, item 3), and defining as accessories persons who provide the means to carry out the offence (art. 37, item 3).

In accordance with this general principle, persons who provide economic cooperation or who supply the means for the commission of illegal acts which the Penal Code establishes as offences which compromise the foreign relations of the State, offences of international significance, offences against public order and offences against social peace are subject to penalties similar to those applicable to the direct perpetrators; the penalty is reduced by one third if the person's degree of participation is that of complicity (arts. 62 and 63 of the Penal Code).

Support for offences by illegal armed groups: The Guatemalan Penal Code, Legislative Decree No. 17-73 of the Congress of the Republic, establishes offences against social peace; within this category, article 398 of this body of laws penalizes by 3 to 10 years' imprisonment persons who provide assistance or economic cooperation for the maintenance of armed groups or militias other than those of the State.

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.

What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Economic cooperation for the maintenance of terrorist groups is penalized by 3 to 10 years' imprisonment (Penal Code, art. 398, second paragraph).

In view of the close relationship between money-laundering and international terrorism, among other offences, it is worth noting the provisions of the Act Against the Laundering of Money or Other Assets, articles 11 and 12 of which provide as follows:

Article 11

"**Precautionary measures**. The trial judge or court may order at any time, without prior notice or hearing, any precautionary or security measure established by law to ensure the continued availability of the property, product or instruments proceeding from or related to the offence of laundering money or other assets, when the Office of the Public Prosecutor so requests. Such request shall be considered and decided upon by the judge or court immediately."

Article 12

"***Periculum in mora***. In case of *periculum in mora*, the Office of the Public Prosecutor may order the confiscation, seizure or freezing of property, documents and bank accounts, but it must request judicial approval immediately, providing the respective inventory of such property, documents and bank accounts and indicating the place at which they are situated. If the judge or court does not confirm the precautionary measure, it shall order forthwith the return of the property, documents or bank accounts in question."

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

What measures exist to prohibit the activities listed in this subparagraph?

Criminal law

The Guatemalan Penal Code, Legislative Decree No. 17-73 of the Congress of the Republic, establishes offences against social peace; within this category, article 398 of this body of laws penalizes by 3 to 10 years' imprisonment persons who provide assistance or economic cooperation for the maintenance of armed groups or militias other than those of the State.

Paragraph 2 of Security Council resolution 1373 (2001):

2. *Decides also* that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Criminal law

Offence of illegal armed groups: The Guatemalan Penal Code, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 398 of this body of laws establishes the offence of illegal armed groups, providing that persons who organize, form or direct armed groups or militias other than those of the State shall be sentenced to 3 to 10 years' imprisonment.

Offence of militancy in illegal groups: The Guatemalan Penal Code, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 399 establishes the offence of militancy in illegal groups, providing that any person who is a member of the illegal groups referred to in the preceding article [398] shall be sentenced to two to eight years' imprisonment.

Offence of possessing and bearing firearms: The Guatemalan Penal Code, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 400 establishes the offence of possessing and bearing firearms, providing that the possession and bearing of firearms or weapons of war, or of ammunition or accessories for them, the use of which is reserved exclusively for the Army of the Republic, shall be penalized by six months' to three years' imprisonment and a fine.

Offence of stockpiling arms or ammunition: The Guatemalan Penal Code, Legislative Decree No. 17-73, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 401 establishes the offence of stockpiling arms or ammunition, providing that any person who has or establishes a stock of arms, ammunition or other military supplies, the use of which is reserved exclusively for the Army of the Republic, shall be sentenced to two to six years' imprisonment and a fine.

Offence of trafficking in explosives: The Guatemalan Penal Code, Legislative Decree No. 17-73, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 402 establishes the offence of trafficking in explosives, providing that any person who illegally has in his possession, manufactures, transports, traffics in or supplies in any form explosive, flammable or incendiary or asphyxiating substances and instruments or devices for causing them to explode shall be sentenced to 10 to 15 years' imprisonment.

Chapter V, article 245 of the Political Constitution of the Republic of Guatemala establishes the organization and operation of armed groups not regulated by the laws of the Republic as a punishable offence.

Decree-Law No. 38-89 of the Congress of the Republic of Guatemala, enacted to regulate the bearing of arms, is currently in force and is being studied with a view to its future amendment to improve the control and allotment of arms.

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information.

What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

Security relations are maintained among State agencies and at the international level, especially the Central American level, for the prevention of all criminal acts.

As a result of the terrorist attacks on New York's Twin Towers on 11 September 2001, the Presidents of the Central American countries (Guatemala, Belize, El Salvador, Honduras, Nicaragua and Costa Rica), meeting in Tegucigalpa, Honduras, on 19 September 2001, issued a declaration entitled "Central America united against terrorism", which indicated the Presidents' decision to convene an extraordinary meeting of the members of the Central American Security Commission (Legal Subcommission, Public Safety Subcommission and Defence Subcommission) to draw up a regional plan to combat terrorism.

On 25 September 2001, the Central American Security Commission met in Tegucigalpa, Honduras, and drew up the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities, which provides for the preparation of individual plans for each country, with the participation of the public safety and defence machinery to carry out activities in the areas of intelligence, physical security of installations and the use of military and public safety personnel in special operations to neutralize terrorist acts throughout the national territory.

Guatemala's efforts are supported by the following international conventions to which it is a party:

On 8 November 1979, the Congress of the Republic of Guatemala approved the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, adopted by the Organization of American States in Washington on 2 February 1971. This Convention was ratified by Guatemala's executive branch on 21 November 1979 and published in the Official Gazette of the Republic on 13 March 1980.

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, which promotes effective international cooperation and the prevention and suppression of such criminal acts. This Convention was duly ratified.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988. Duly ratified.

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on 13 January 1993, signed by the Government of Guatemala on 14 January 1993, approved by the legislature on 31 August 2000 and ratified by the President of the Republic. The instrument of ratification will be deposited shortly.

Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the

Subsoil Thereof, opened for signature in Washington, London and Moscow on 11 February 1971. This Treaty has been ratified.

In addition, Guatemala is completing the formalities with respect to the International Convention for the Suppression of Terrorist Bombings, opened for signature in New York on 12 January 1998. It is currently awaiting ratification by the President of the Republic.

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens.

What legislature or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

When the Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala were issued, it was established in Government Decision No. 383-2001 that refugee status could not be granted to anyone who had committed a crime against the peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; or acts contrary to the purposes and principles of the United Nations.

International legislation

On 8 November 1979, Congress adopted the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, adopted by the Organization of American States in Washington on 2 February 1971.

This Convention was ratified by the Guatemalan executive branch on 21 November 1979 and published in the Official Gazette of the Republic on 13 March 1980.

By Decree No. 44-78 of 23 August 1978, Congress adopted the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, which promotes effective international cooperation and the prevention and punishment of the offences in question; it was duly ratified.

By Decree No. 1-94 of 15 January 1994, Congress adopted the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988; it was duly ratified.

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.

What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Criminal law

Crime of interference: Book II, Title XI, Chapter III of the Guatemalan Penal Code covers "Crimes which compromise the foreign affairs of the State". Article 371 thereof defines the crime of interference, stating: "Anyone who, in Guatemalan territory, carries out activities designed to modify the political system of another State through violence shall be sentenced to one to three years' imprisonment and a fine."

Crime of hostile acts: Book II, Title XI, Chapter III of the Guatemalan Penal Code covers "Crimes which compromise the foreign affairs of the State". Article 372 thereof defines the crime of hostile acts, stating: "Anyone who, without the approval of the Guatemalan Government, commits hostile acts against another State which might give rise to a declaration of war against Guatemala shall be sentenced to two to eight years' imprisonment. Anyone who, under the same circumstances, exposes Guatemalans to potential humiliation or reprisals against their person or property or alters the friendly relations between the Government of Guatemala and a foreign Government shall also be subject to such a sentence. The sentence shall be doubled if the said hostile acts result in war."

Crimes of international scope: Book II, Title II, Chapter IV of the Guatemalan Penal Code covers "Crimes of international scope", including the crime of genocide (art. 376), incitement to genocide (art. 377), death of a foreign head of state (art. 379) and human rights violations (art. 378), which carry heavy sentences of between 5 and 50 years' imprisonment. In the punishment of such crimes, the international legal principle of reciprocity shall prevail.

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentences given.

Prosecution of persons who commit terrorist acts:

The Constitution of the Republic of Guatemala establishes that it is the State's duty to ensure that justice is served; this implies the obligation to bring to justice those responsible for the commission of unlawful acts, including persons who commit terrorist acts and related offences.

The Supreme Court has the power to hand down sentences and to ensure the execution thereof; no one may be convicted, punished or made subject to security or correction measures without a definitive sentence obtained through proceedings conducted in accordance with articles 2 and 203 of the Constitution, article 1 of the Penal Code and article 4 of the Code of Criminal Procedure.

The international conventions on domestic and international terrorism which have been signed, adopted and ratified by Guatemala and which therefore have the

force of law therein establish the State's duty to ensure the prosecution of those presumed responsible for terrorist and related crimes.

These international instruments include: (a) the Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes against Persons and Related Extortion that are of International Significance; (b) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; (c) the International Convention for the Suppression of Terrorist Bombings; and (d) the International Convention for the Suppression of the Financing of Terrorism.

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.

What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Responsibilities in the area of reciprocal international assistance

General principle: Guatemala conducts its relations with other States in accordance with international principles, rules and practices with a view to the maintenance of peace and freedom (Constitution, art. 149).

International legislation: Article 11 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation establishes States parties' responsibility to afford one another the greatest measure of assistance in connection with any criminal investigation, criminal proceedings or extradition proceedings brought in respect of the offences defined in the relevant instruments, including with respect to efforts to obtain any evidence in its possession which is necessary to the said proceedings.

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

The Department of Immigration is responsible for ensuring that nationals' and foreigners' entry into, stay in and exit from Guatemalan territory are carried out in accordance with the law (Immigration Act, art. 4 (3); Legislative Decree No. 95-98).

For entry into Guatemalan territory, foreigners are required to present a valid travel document and the relevant visa, except as established in the international treaties, agreements and conventions to which Guatemala is a party (Immigration Act, art. 73).

The Department of Immigration is empowered to deny entry into the country to foreigners under article 102 of the Immigration Act and may compel transport companies to return such persons to their place of origin.

The Department of Immigration is also empowered to carry out immigration inspections of the passengers, crew and staff of means of transport during their entry into, stay in or exit from the country. It is also empowered to determine the points at which inspections will be made (Immigration Act, art. 99).

In that regard, a new, more reliable passport with a series of security measures that make forgery impossible was issued as from 17 September 1999.

Immigration controls include the creation and coordination of services relating to nationals' and foreigners' entry into and exit from the territory of the Republic through verification of their documents and consideration of problems caused by such movement. It also includes monitoring of compliance with legislation regarding foreigners' stay and activities in Guatemala (Immigration Act, art. 87).

It is unlawful for foreigners to remain in Guatemala if any of the following situations apply: (1) entry into the country at a point not authorized for that purpose; (2) entry without passing through immigration control; (3) failure to comply with the regulations governing entry or stay under the Immigration Act; or (4) continued presence in the country after expiry of the authorized time period (Immigration Act, art. 89).

Entry into the country shall take place only through Department of Immigration monitoring points, the number, nature and location of which shall be determined by the Ministry of the Interior upon the recommendation of the Department of Immigration (Immigration Act, art. 90). However, it must be acknowledged that, as in many countries, there are under-monitored areas along the border, a fact which facilitates the unofficial movement of persons across it.

All foreigners are subject to immigration controls upon arrival in the country in order to determine whether they meet the criteria established by law (Immigration Act, art. 912).

The Department of Immigration may prohibit the entry or terminate the stay of foreigners for reasons of public order, national interest or State security. In order to terminate a foreigner's stay in the country, the Department of Immigration must issue a justified order (Immigration Act, art. 92).

Criminal law

Articles 321 to 327 of the Guatemalan Penal Code define crimes of document forgery, classifying them as offences against the public credit and establishing sentences of two to six years' imprisonment and fines for anyone who manufactures or uses forged documents.

The immigration authorities are responsible for implementing ongoing security measures to detect falsified documents upon entry into or exit from the country with the help of public security forces units (the National Civil Police); in situations exceeding the latter's capacity, Guatemalan army units provide immediate support.

The immigration inspection points along Guatemala's borders are currently being standardized.

Security is being improved throughout the country at immigration and customs inspection points and at the airports.

Paragraph 3 of Security Council resolution 1373 (2001):

3. *Calls* upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups.

What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

The appointment of members of a multidisciplinary committee has been under way since 2002; it will make amendments to the procedures followed by the legal system in monitoring the domestic and international movement of firearms and their parts, components and ammunition and the responsibilities of the various Guatemalan State bodies involved in matters relating to that issue.

The National Civil Police has implemented a contingency plan, the primary purpose of which is to increase the safety of accredited embassies in Guatemala in order to prevent terrorism-related acts.

On the basis of the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities, the public security and defence forces are making joint efforts to implement a mechanism for the exchange of information between intelligence bodies at both the national (the Director of Intelligence of the Guatemalan army, the National Civil Police and other relevant bodies) and the international (intelligence agencies) levels.

Within each country, along the borders and at customs posts, ports and airports, intelligence activities and operatives are being deployed in connection with the registration of persons, vehicles and packages of all kinds; the verification of documents and their owners; and the gathering of any information that can assist in the detection of terrorist acts committed or planned by national or international groups.

Security measures for the storage, transport and use of products sold under Government licence pursuant to Decree-Law No. 123-85 of 29 November 1985 and monitoring of permits for the import of chlorate are being strengthened.

Mechanisms for monitoring the use of weapons have also been increased at the national level by the Department of Arms and Munitions Control and at the international level, with regard to the possession and bearing of small- and large-calibre (defensive and offensive) weapons and the use, transport and purchase of ammunition, through the intelligence agencies of each country.

Joint operations of the public security forces and the Guatemalan army have also been expanded through the use of canine units at ports, airports and border crossings in order to detect any unlawful act with potential links to terrorist activities.

Security measures have also been stepped up at La Aurora International Airport, and security is being strengthened and enhanced at all ports, airports and border crossings.

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts.

What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

As already indicated, Congress recently promulgated Decree-Law No. 67-2001, Act Against the Laundering of Money and Other Assets, which is now in effect in Guatemala.

Furthermore, the Minister for Foreign Affairs received information from the United Nations and the Organization of American States, and also from other States, concerning anti-terrorist action taken, and has given the various relevant State agencies implementation and execution instructions.

Resolution AC-02-1998 of 20 February 1998 contains the Agreement on the Exchange of Information among Members of the Central American Council of Controllers of Banks, Insurance Companies and Other Financial Institutions. In implementation of the Agreements, the Guatemalan Superintendency of Banks has signed Conventions on the exchange of information with Panama and El Salvador, and a number of other conventions are being processed.

Owing to the existing relationship between money-laundering and funds that may be used for financing terrorist acts, any information exchanged between States is of great importance. In that connection, the Act Against the Laundering of Money and Other Assets stipulates that one of the functions of the Special Audit Office is "the exchange of information with counterpart entities of other countries, for the purpose of analysing cases relating to the laundering of money and other assets, following the joint signature by Guatemala and such entities of memorandums of understanding for other cooperation agreements", (art. 33 (d)).

Article 34 of the Act stipulates the following:

"**Reciprocal legal assistance.** With a view to facilitating the prosecution and investigation of offences covered by this Act, the Office of the Public Prosecutor and the Special Audit Office, as well as any other competent authority, may provide assistance to and seek assistance from the competent authorities of other countries in order to:

- Obtain evidence or hear statements by individuals;
- Present legal instruments;
- Carry out inspections and effect seizures;
- Examine articles and places;
- Provide information and evidence;
- Supply originals and authentic copies of documents and files concerning a given case, including banking, financial and commercial documents;

- Identify products, instruments and other forms of evidence;
- Provide or seek any other type of reciprocal judicial assistance permitted under domestic law."

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist acts and to take action against perpetrators of such acts.

What steps have been taken to cooperate in the areas indicated in this subparagraph?

International legislation

Congress, through Decree-Law No. 73-79, adopted the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, article 8 of which indicates that States accept the obligation to cooperate in taking all measures they consider effective in conformity with their own laws, especially those laid down in the above-mentioned convention to prevent and punish acts of terrorism.

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Traditionally Guatemala has followed a policy of maintaining friendly relations with other States, engaging in international cooperation and repudiating any kind of terrorist activities. Accordingly, it has signed a number of major international instruments to combat terrorism:

- On 8 November 1979, Congress adopted the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded by the Organization of American States in Washington on 2 February 1971;

The Convention was ratified by the Guatemalan executive branch on 21 November 1979 and published in the Guatemalan Official Gazette on 13 March 1980.

- Through Decree No. 44-78 of 23 August 1978, Congress adopted the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971, which promotes effective international cooperation and the prevention and suppression of such offences;
- Through Decree No. 1-94 of 15 January 1994, Congress adopted the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed in Montreal on 24 February 1988;

The three above-mentioned Conventions have been ratified by the Government of Guatemala.

- Through Decree No. 70-2001, Congress adopted the International Convention for the Suppression of Terrorist Bombings, opened for signature in New York on 12 January 1998. This Convention will be ratified shortly;
- Through Decree-Law No. 71-2001 of 29 November 2001, Congress adopted the International Convention for the Suppression of the Financing of Terrorism, opened for signature at United Nations Headquarters in New York on 10 January 2000. This Convention will be ratified shortly.

Guatemala is also a party to the following international conventions and protocols:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Seizure of Aircraft;
- Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention against the Taking of Hostages;
- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection and the annex thereto;
- Convention on the Physical Protection of Nuclear Material;
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;
- Convention of 1951 relating to the Status of Refugees and Protocol of 1967 relating to the Status of Refugees;
- Havana convention on the right of asylum;
- Montevideo Convention on Political Asylum;
- Caracas Convention on Territorial Asylum;
- Caracas Convention on Diplomatic Asylum.

The Protocol Additional to the Agreement between Guatemala and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty of Non-Proliferation of Nuclear Weapons. It has been signed but not yet ratified.

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).

Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

Guatemala conducts its relations with other States in accordance with international principles, rules and practices with a view to the maintenance of peace and freedom, observance of and the defence of human rights, and the strengthening of the democratic processes and international institutions that guarantee mutual advantage and equity among States (Constitution, art. 149).

As a member of the United Nations, of the Organization of American States and of many other regional and international organizations and forums, Guatemala is a signatory to a great number of bilateral and multilateral treaties, conventions, agreements and resolutions, which, once they have been adopted and ratified by Guatemala, are incorporated into domestic law and have the force of law.

Primacy of international law

Guatemalan law states the general principle that in the area of human rights, treaties and conventions accepted and ratified by Guatemala have primacy over domestic law (Constitution, art. 46).

Incorporation of international law into domestic law

Under articles 171 (l) and 172 of the Constitution, it is within the competence of the legislature to adopt, before ratifying them, international treaties, conventions and arrangements calling for a commitment on the part of Guatemala. Traditionally, Guatemala, as a democracy and a State subject to the rule of law, has followed an international policy of observing and complying with the resolutions of the United Nations Security Council and the international courts, and it continues to do so.

In addition, Guatemala is carrying out the necessary formalities in connection with the following international instruments to combat terrorism:

- International Convention against the Recruitment, Use, Financing and Training of Mercenaries (still to be adopted by Congress and then ratified);
- Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.

Thus, the only instrument remaining to be ratified will be the Central American Convention for the Prevention and Suppression of the Laundering of Money and Related Assets by means of Illicit Trafficking in Drugs and Related Offences. It was signed in Panama on 11 July 1997 and ratified by Congress through Decree-Law No. 73-2000, which was published in the Official Gazette of 2 July 2001.

On 14 September 2001, Government Decision No. 383-2001, containing the Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala, was issued.

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts.

What legislation, procedures and mechanisms are in place for ensuring asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Guatemala is a party to the Convention relating to the Status of Refugees, adopted in Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, signed in New York on 31 January 1967. In implementation of the principles and norms laid down in the above-mentioned international instruments, the President of Guatemala issued Government Decision No. 383-2001 of 14 September 2001, which contains the Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala.

Under article 43 of the Regulations, refugee status may not be granted to anyone who has committed a crime against the peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; anyone who has committed a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or acts contrary to the purposes and principles of the United Nations.

Under the above-mentioned regulations, a national commission for refugees was set up whose main tasks are to decide on proper implementation of the normative provisions of the Convention relating to the Status of Refugees and the protocols thereto and to determine the legal status of refugees in Guatemalan territory.

The Department for Immigration is responsible for operational implementation of all matters relating to the determination of refugee status and for providing legal and inter-agency support for the Commission. The Department for Immigration interviews asylum-seekers and may request private individuals and national and international civil servants and institutions, both inside and outside Guatemala, to supply such reports, documents and opinions as it may consider necessary in order to verify the information it has collected. Once the verification process has been completed, it transmits its opinion, together with the corresponding file, to the Commission for analysis and settlement of the case.

Constitutional law and immigration legislation

Guatemala recognizes the right of asylum, which it grants in accordance with international practice (Constitution, art. 27).

Foreigners who have been granted refugee status by the competent authorities in accordance with the relevant international conventions to which Guatemala is a party are regarded as refugees (Foreigners Act, art. 19).

All matters relating to asylees, refugees and stateless persons are governed by the conventions, treaties and international arrangements to which Guatemala is a party, and when such persons have been duly classified they are deemed to be temporary residents for all immigration purposes. Individuals with such status must

request authorization in order to leave Guatemala, and they are warned that should they do so they will forfeit their refugee or asylee status, whichever applies. Upon losing their status, such individuals become subject to regular immigration legislation (Foreigners Act, art. 18).

The Department for Immigration is responsible for issuing identity, travel and residence documents to refugees, asylees and stateless persons in Guatemalan territory, following fulfilment of the legal requirements; it is also responsible for ensuring that foreigners who stay in Guatemalan territory do so in accordance with the relevant legislation (art. 4, item 3, of the Immigration Act, Legislative Decree No. 95-98). The Department for Immigration may prohibit or suspend the stay of foreigners in Guatemala for reasons of public order, national interest or State security. In order to suspend a foreigner's stay in Guatemala, the Department must issue a justified order (Immigration Act, art. 92).

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

The Guatemalan Refugee Commission, to which reference is made in the context of the discussion of subparagraph (f) of the questionnaire, and the Department for Immigration must see to it that refugee status is respected and not abused. The Commission, in accordance with the Regulations for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala may decide to expel a refugee solely for reasons relating to public order and national security. Article 27 of the Constitution stipulates that Guatemala may not expel a political refugee from Guatemalan territory who will then be sent to the country that is pursuing him or her.

Article 21 of the Regulations stipulates that a refugee may be extradited solely in accordance with the provisions of international treaties duly ratified by Guatemala. This provision is in keeping with article 27 of the Constitution, which indicates that extradition is governed by the provisions of international treaties.

Article 27 of the Constitution, again, specifies that Guatemalan citizens are not to be extradited for political offences, and are under no circumstances to be handed over to a foreign government, unless such action is required by international treaties and conventions in connection with crimes against humanity or violations of international law.

No noteworthy cases involving alleged terrorists have arisen.

Legislation on immigration

In Guatemala refugees are regarded as temporary residents since they are authorized to stay in the country for two years, for the purpose of engaging in a lawful activity on a temporary basis (Immigration Act, arts. 16-18).

It is the responsibility of the Department for Immigration to ensure that foreigners who stay in Guatemalan territory do so in accordance with the relevant legislation (art. 4, item 3, of the Immigration Act, Decree No. 95-98). The Department may prohibit or suspend the stay of foreigners in Guatemala for reasons of public order, national interest or state security. In order to suspend a foreigner's stay in the country, the Department for Immigration must issue a justified order (Immigration Act, art. 92).

Foreigners who break Guatemalan domestic laws by committing a crime during their stay in the country, are, when permitting them to stay in Guatemala is not in the national interest, as duly defined by the Department for Immigration, punished by being expelled and returned to their country of origin.

Article 245, chapter V, of the Constitution, indicates that organization and operation of armed groups not subject to the laws of Guatemala, is punishable.

Guatemala has also taken steps to prevent transnational crime and international terrorism, illicit drugs, money-laundering and arms trafficking, and illicit circulation of nuclear, chemical and biological weapons.

Decree No. 48-92, Act to Combat Trafficking in Narcotic Drugs, was adopted by Congress and has taken effect.

Decree No. 67-2001, Act Against the Laundering of Money and Other Assets, was adopted by Congress and has taken effect in Guatemala.

Guatemala is a signatory to the anti-terrorism conventions of the United Nations, which have already been ratified by Congress.

Congressional Decree No. 39-89, promulgated in order to regulate the unlawful bearing of arms, is in effect but is under consideration with a view to its amendment so as to improve the control and allotment of weapons.

Technical cooperation

The above information provides a summary of current legislation and in some cases describes the institutions responsible for overseeing and implementing the legislation. The focal point for implementation of resolution 1373 (2001) has taken the opportunity to consult the various entities that make up the Inter-Agency Commission on the thematic areas that have been giving rise to the most difficulties as regards implementation of current legislation. The replies received indicate that the areas in which technical cooperation would be of benefit are as follows:

- Immigration services and travel documents;
- Airport security;
- The link between drug trafficking and terrorism;
- Arms trafficking;
- Money-laundering.